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L.L.B THESIS

**APPOINTMENT OF SOCIAL COURT JUDGES UNDER
PROCLAMATION 12/2003 AND 31/2007**

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PROCLAMATION 12/2003 AND 31/2007**

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CHAPTER ONE

Appointment of Judges in legal systems

Introduction

Since the promulgation of Addis Ababa city administration charter, the appointment of social court judges is made according to certain requirements provided under qebele social court administration proclamation. There are two proclamations dealt in this paper concerning the appointment of qebele social court judges, proclamation 12/2003 and 31/2007.

The first proclamation is the establishing proclamation of social courts in Addis Ababa and the second one is the amending proclamation. Both proclamations have specific provisions in relation to the appointment of qebele social court judges.

The paper is designed to examine practical problems associated with the appointment of social court judges. To this end the organization of the paper is classified in three chapters. The first chapter provides the appointment of judges in legal systems, the second chapter provides appointment of social court judges under proclamation 12/2003 and 31/ 2007 and the last chapter provides practical problems associated with the appointment of qebele social court judges finally conclusion and recommendation follows.

1. Appointment of Judges in legal systems

There are significant differences between the appointment of a judge in the common law system descended from British practice, and civil law systems descended from continental European judicial practice. The descriptions below are necessarily archetypical. Details vary from judicial system to judicial system. In many cases, the judicial systems have experienced convergent evolution, expressly or unconsciously adopting similar practices or operating in a manner that minimizes the impact of formal differences between the archetypical role of each system's judges.¹ For example, while common law judicial procedure generally contemplates a single evidentiary trial, judges are actually appointed after many years experience. While civil law judges are appointed after certain years training in law schools. The special features of judges in two legal systems are provided here under.

1.1. Judges in common law legal systems

In common law countries, judges usually operate under the adversarial system of justice. At the trial level a single judge usually presides over court proceedings. Common law judges are generally appointed or elected after careers as practicing attorneys, although many receive brief educational programs specific to judging once taking the bench. Judges are frequently drawn from the ranks of barristers, as opposed to solicitors, where a distinction is made between the two as separate legal professions. Many U.S. states permit non-lawyers to serve as justices of the peace or as inferior jurisdiction judges in rural areas, but this practice is generally limited to less serious criminal offenses and small claims. Federal judges are not required by law to be attorneys, but it has

¹ibid

been long established that the President traditionally appoints only attorneys to the federal bench.²

1.2. Judges in civil law systems

In most civil law jurisdictions with inquisitorial systems, judges go to special schools to be trained after graduating with a law degree from a university; after such training they often become investigating magistrates. However, the inquisitorial system is not used in all civil law jurisdictions; it is primarily in use in countries of Southern Europe that were influenced by Napoleon's Code Napoleon, such as France, Italy, Spain, and Portugal. In Northern Europe, the adversarial system is predominant in criminal matters. Nevertheless, judges in both Northern and Southern Continental Europe generally do not have backgrounds as practicing attorneys (or advocates), even though they are legally trained³.

In the civil law system, serious matters are almost always decided at the trial level by at least three judges, and sometimes more, often in combination with lay persons in serious criminal matters, although one of those judges may take the lead in gathering evidence in a case. In civil law systems typically only the equivalent of U.S. small claims and misdemeanors are handled by a single trial judge.

For example, in Finland and Sweden, there are two kinds of judges in district courts: a legally-trained judge functions as the president of the court, while judges elected for a four-year term from the population, without any special legal training, serve as lay members of the court. In Sweden, the same is true for the appellate courts. Lay judges do not function like a common-law jury. In the usual case, three lay judges in district courts hear criminal cases in cooperation with a legally trained judge, each judge - legally trained or not - having an individual vote.

² ibid

³ ibid

However, in some jurisdictions, criminal cases in severe matters, such as homicide, require a trial by jury, where the jury decides upon the issue of mens rea. Issues of law - and also the assessment of what has factually been proven to have taken place - are the responsibility of the judge, who guides the jury by means of a jury instruction. Civil cases, however, are heard exclusively by legally trained judges.⁴

In civil law practice, appeals are usually heard and decided by a panel of multiple judges. State courts can be called district courts. The highest appellate court in a civil law jurisdiction (often translated as "supreme court" in English), is typically organized more like an intermediate appellate court in common law practice; decisions are made by a panel of judges that does not include all judges sitting on the court. Another key difference is that, judges are typically assigned to hear appeals in the highest appellate court based on specialization in a particular type of law, rather than at random. In civil law systems, the only appellate court of last resort in which all members of the court sit together to hear a case is the constitutional court (if one exists).

1.3. Appointment of judges and qualification in some countries

Every state that has or claims to have a developed legal system has (or ought to have) specialists that are representatives of the legal profession. Historical developments and tradition led all Western countries to establish their own systems of legal education and legal profession. They significantly differ from each other. There is no commonality even within the same legal family.⁵ As such therefore, it is not possible to talk about a single or universal system of legal education. The fact that there is no

⁴ ibid

⁵ For example, French and German legal educational systems as well as legal professions significantly differ from each other. The same situation is in the English and American legal professions even though both are the common-law-states and have common methods of the work of judges.

single universal notion of lawyer demonstrates the point made above. The term “jurist”⁶ that is relatively understandable in Continental Europe, is incomprehensible for common-law-states. The English term “lawyer” used in American legal language is not identical to “jurist”. Despite significant differences, the following characteristics are typical to the legal professions of all developed Western countries:

- a) There are traditional legal professions with almost the same functions in all countries. These are, first of all, judges, prosecutors, advocates;
- b) There are strict and transparent rules for entering these professions laid down by the state in Continental Europe or recognized by the state in the UK or USA;
- c) Usually it is difficult to enter these professions and often theoretical education is not enough;
- d) In almost all Western countries, it is a privilege to represent a legal profession whether you are an advocate or judge.

1.3.1. Great Britain

The British legal profession has certain originality. However, a few common law countries share some of its features. The legal profession in England is divided into solicitors and barristers. Solicitors, of which there are over 50 000,⁷ are advocates who render advice to clients and prepare necessary materials for trials. Solicitors have the right to participate only in Magistrates Courts or County Courts.

⁶ This word is of German origin and came into use in the thirteenth century with the establishment of new social groups with a legal background in European universities. *Chanturia*, Introduction to the General Part of the civil law of Georgia 1997, pp.14

⁷ Just English, English for Lawyers, Moscow, 1996, pp 13

County courts, which usually hear only significant civil cases, consist of professional judges selected from among the barristers. Here too the Queen on the recommendation of the Lord Chancellor appoints the judge.

Barristers as the advocates of higher qualification and wider competence have the right to appear in the courts of higher instances where solicitors do not enjoy such a right. It is noteworthy that the party to the trial may meet with a barrister only through his solicitor. Importance of barristers is stressed by the fact that only barristers with at least ten years experience of work can be appointed as high court or county court. Correspondingly the number of barristers is relatively small - about 5 000.⁸ Among barristers there is a distinguished elite group called the Queen's Counsel. As a rule, judges are selected from among them. It is noteworthy that appointment as a High Court judge is considered the peak of a judicial career.

Another significance of the British system is that there is no special school for judges or prosecutors. The British system trains advocates (solicitors and barristers) not judges and prosecutors. Only barristers with a successful and long practice can become judges. In preparation, a barrister performs a judge's duty on a part time basis for several months before appointment. The age limit for barristers to become judges is fifty, although in exceptional cases it can happen with a forty year old candidate. In Britain one will not be successful in finding a young judge as in France, Germany and other countries of continental Europe, including Georgia.

The educational system for solicitors and barristers is unique as well. A bachelor's degree that one completes after studying three-years at

⁸ ibid

university is not sufficient to become a solicitor or barrister, even if one graduates from Oxford or Cambridge. A person holding a BA must complete a nine-month specialist course at a law college. After passing the final examinations, a future solicitor must work unpaid in a solicitor's office. However, fees for tuition are deducted. One must afterwards work for three years as an assistant of the solicitor in order to gain permission to work as an independent solicitor.⁹ In total about nine years is required to work as an individual solicitor.

A similar system applies to barristers. They must pass a special qualification called the examinations of the Bar Council. Both solicitors and barristers have professional bodies that in addition to other functions set training and educational standards.

1.3.2. France

The system of legal education is different in France. Unlike a British judge, a French judge or prosecutor achieves this position not because of long-term advocacy. It is initially meant to appoint a person on this position according to previously expressed personal desire. Thus to be a judge in France is not necessarily the pinnacle of one's legal career but a process where a novice is involved from the beginning.

At first glance, the French legal educational system, like the British one, is two-phased.

The difference is that a university degree is not compulsory in England but established by practice, whereas in France it is. Future judges, prosecutors, advocates and notaries must complete four years of

⁹ *Zweigert/Kotz, Introduction to Comparative Jurisprudence in Private Law (In Georgian), Edited by Ninidze, Volume I, 2000, pp.237.*

university study, pass exams and be awarded a law license (licence en droit).

Those who wish to become judges or prosecutors must pass entrance exams in the National School of Magistracy located in Bordeaux, established in 1958. It is a privilege to attend this school and only 150 out of about 4000 candidates gain entrance each year.

Study takes two years with strong emphasis on practical training. After theoretical courses, students practice in courts and prosecutor's offices. Then they pass final exams and are appointed as prosecutors or judges.¹⁰ Unlike Britain where the magistrates are justices of the peace, in France prosecutors and judges are called magistrates.

Education of advocates is performed by the Advocates Chambers. They are open at residential places where the Appellate Courts (number of which is 35) and courts of high instances (182 such courts) are located.

Those with a higher university degree and having been awarded with the "maitrise endroit" and certificate of validity are recruited to the Advocates Chamber as trainees. A student obtains this certificate for participation in seminars held by the Advocates Chambers and Law Faculties. A trainee must complete training for 2 years at one of the Law Offices. He is also assigned by the advocate and appears before the court on trials with regard to cases of poor citizens. After training, without special examination the young advocate is enrolled in the Advocates Chamber after which he is authorized to practice law in any court other than the Court of Cassation and Council of State.¹¹ In total 7 years of theoretical and practical background is needed to become an advocate. The

¹⁰ On the basis of experience of French National Master School was prepared the draft law of the High School of Justice of Georgia which the Parliament will hopefully adopt this year.

¹¹ *ibid*

advocate's profession is considered very prestigious and advocates as persons with special reputation.

French law is familiar with division of advocates according to the court instances. For example, *Avoués* participate only in Appellate Courts and only within the limits of the territory that their license applies. Unlike the British system, the advocate's career in France is not connected with becoming a judge.

1.3.3. Germany

Unlike other countries of continental Europe, the common concept of jurist (Volljurist) is used in Germany. A jurist is a person who has completed general legal education and passed two state exams. He can hold the post of judge, prosecutor, advocate, notary or other administrative position without any additional special education.

Jurists are taught at law faculties in universities. The length of study at universities is determined by the Federal Law on Judges and is three and a half years but can be reduced if a person passes all subjects of the program earlier. However, study must last at least two years.¹²

The German educational system, unlike British one, makes a special accent on the judge. One, who meets the requirements set by the Federal Law on Judges, has the right to hold any legal post whether in public service or so-called free professions. This is the reason why the key principles and requirements of legal education are determined by the Federal Law on Judges.¹¹ The law stipulates subjects to be taught and their methodology. The law requires that study concept include court and administrative practice as well as providing legal advice.

¹² ibid

After successfully passing the internal university exams the student must pass the first state exam with the Examination Boards of the Ministries of Justice or High Courts of Federal Lands.

After passing the first state exam, a graduate called a Referendar must work as a trainee in a mandatory placement such as court, prosecutor's office, administrative authority and bar. The Referendar also completes optional training in bodies such as legislative bodies or a notary. This practice lasts two years. The Referendar should be trained in each compulsory placement for at least three months.

After completion of two years of training, a person passes the second state exam and fully qualifies as a jurist. This makes him eligible to become a judge. In total, it takes seven years to become a jurist, including the period of preparation for state exams.

Every law professor of the university is eligible to be a judge. One who meets the statutory requirements set for judges may become a prosecutor, advocate or notary.

1.3.4. United States

The American system of legal profession is unique and interesting. While American law belongs to the common law family, it differs from the British system. For instance in America there is no differentiation into solicitors and barristers. The word lawyer generally includes meaning of an advocate.

According to American lawyers the way to advocate's profession is quite long and arduous: first, one requires a graduate degree, then three years at law school. After law school in order to become a legal practitioner one

must prepare for and pass the bar examination.¹³ This is similar in format to those tests that judges in Georgia recently took.

The majority of judges in America are highly skilled jurists. Practically all judges have legal education but only a small number of lawyers become judges. State judges, as a rule, are elected, while the US President with approval from the Senate appoints federal judges.

In sum one can differentiate how appointment of judges is different in different countries and how it is linked with education in law and experience. Appointment of judges in Ethiopian legal systems and appointment of judges in social courts of Addis Ababa will be dealt in the next chapter.

¹³ ¹³ *Friedman, Introduction to American Law, Moscow, 1993, pp. 197.*

CHAPTER TWO

2.1. Appointment of Judges in Social Courts

Currently the appointment of judges for social courts is governed by proclamation 31 /2007 of Addis Negarit Gazzet. Prior to this proclamation there was another proclamation, proclamation 12/2003. The latter is the establishing proclamation of social courts. In this chapter I go through how appointments of social courts look like in both proclamations:

2.2. Recruitment and Appointment of Social Courts Judges under Proclamation 31/2007

As it is reflected under the preamble of this proclamation one of the reason for the amendment of the previous proclamation is the necessity to establish the legal ground for recruitment, conditions of removal, appointment and dismissal of judges.¹⁴

Before I go through the method and the process of appointment of judges, it is better to deal about organization and jurisdiction of social courts. As to organization of courts, It is required that every court may have one or more sits of which each sit shall have a presiding judge, two other judges as well as two alternate judges.¹⁵

The courts has jurisdiction over cases involving property and pecuniary disputes an amount not exceeding five thousand birr and also they do have jurisdiction to adjudicate cases of petty offences committed in violation of hygiene and health regulations and related to same.¹⁶

¹⁴ Preamble of proc. 31/2007.

¹⁵ Art 4(1).

¹⁶ Art 4(2)

It is easy to infer the organization and jurisdiction of social courts which has direct relation with social court judges.¹⁷

2.2.1. The recruitment of the judges

The recruitment of judges is a prior act of appointment of judges and it is conducted by judicial council Art. 23 (1). The proclamation didn't establish any qualification to be recruited as a judge. It may be agued that the qualification for appointment of judges may serve as the qualification for recruitment.

Ato Tewodros Ashagre strongly argued that the recruitment of judges is a prior act for appointment of judges. As appointment couldn't be possible with out recruitment, it is impliedly asserted in the proclamation that the qualification for requirements is reflected through the qualification for appointments so that the qualification for the appointment of the court judges are also requirements for recruitment of judges. The writer holds this position.

2.2.2. Appointment of Judges

The judges of the court shall up on the recommendation of the judicial council, be appointed by the Qebele council.¹⁸ The Qebele council is composed of elected representatives of the residents of the Qebele in the absence of the council the standing committee of the Qebele Administration appoints judges.¹⁹

¹⁷ The jurisdiction has relation with qualification of judges and the organization relates with the number of judges

¹⁸ Article 19

¹⁹ Art. 2(6) of the proclamation

Qualification to be appointed as a Judge

Currently social courts are required to be composed of 5 judges. (One presiding judge, two other judges and two other alternate judges) the qualification for these five judges is different. The proclamation lays educational qualification, minimum age qualification, behavioral qualification and residential qualification.

Qualification to be appointed as presiding judge

The presiding judge should be above 21 years of age and resident of the Qebele in which the court is found.²⁰ The reason as to the residential requirement of the Qebele is the judge surely knows the social problem which frequently occurred in the Qebele. With respect to educational qualification, the presiding judge of the court shall at least be graduate or law in diploma and shall have relevant work experience.²¹

The proclamation also stipulates the national representation and gender representation has to be taken in to consideration up on the appointment of judges.²² In its provision dealing with appointment of judges the proclamation reads “Every appointed judge, before starting his term office, shall necessary have the relevant legal training” which may have great significance in building the capacity of judges and ensuring similar practice in the court.

2.3. Appointment of Judges under proclamation 12/2003

This proclamation is the first detail proclamation that deals with definition of the organization and procedures of the Addis Ababa city government Qebele social courts. Qebele social courts are among one of

²⁰ Art. 20(1).

²¹ Art. 21(2)

²² Art. 20(3)

the judicial bodies of the city government under the revised charter proclamation No 361/2003 of Addis Ababa city government.²³ The proclamation devotes a single article as to appointment of judges and election of judges.

Election of Judges

This is the prior act before appointment of judges that is conducted by the chief executive of the Qebele.²⁴

Appointment of Judges

The Qebele social court judges are appointed by the Qebele council up on the recommendation of the chief executive of the Qebele. Where the city is administered by provisional governments the advisory council shall appoint the judges of social courts.²⁵ Advisory council is a temporary council which is composed of individuals among the Qebele residents' voluntaries during the provisional administration of the city.

Qualification to be appointed as a judge

The proclamation establishes different qualifications to be appointed as a judge, educational qualification, behavioral and residential requirements. The qualification (educational) for a presiding judge and other judges are differently Managed under the proclamation.

Qualifications to the appointed as presiding judge.

The educational qualification which the presiding judge must meet is at least certificate in law and the experience, in addition (Art. 19(2). As to age the judge must attains 21 years and who has to be commendable by the residents of the Qebele.

²³ Preamble of Proc. 12/96)

²⁴ Art. 18(1))

²⁵ Art. 18(1) (2))

Qualification for Other Judges

The difference between the qualification of presiding judge and other judges lies in education. The other judges' qualification is simple and it is enough to read and write whatever their educational level is.

Since social courts mainly manage litigants in their Qebele and most of the cases associated with social issues like Idir, Ikub, antichrists etc. all judges must be residents of the Qebele in order to understand and manage social cases easily.²⁶ It is also clearly stipulated under article 19(3) of the proclamation that the appointment of judges should consider national representation and gender.

In sum the amended proclamations appointment system of judges by the Qebele council up on eh recommendation of the Qebele chief executive is substituted by the appointment of judges by the Qebele council up on the recommendation of judicial council of the Qebele. This is (recommending judges through judicial council) is the significant change made under proclamation 31/2007 with respect to the appointment of judges. The amending proclamation is also better as to the educational qualification of judges. It provides the presiding judge has to be diploma holder in law and other judges should attain 10th of 12th educational while the former proclamation require only require the presiding judge to have at least diploma in law and other judges to have only the ability to read and to write.

The other significant amendment made under proclamation 31/ 2000 is that always the judges are appointed by the Qebele council but exceptional they may be Qebele were in the absence of the council but in the previous proclamation the appointment is made only through the Qebele council or advisory council, where the city is administrated through provisional government.

²⁶ Art. 19(1)

CHAPTER THREE

3. Practical problems associated with appointment of judges

In this chapter I will go through practical problems that occur and have been occurring in qebele social courts associated with appointment of judges, particularly.

The problems has direct relation with political system of the city ,independence of the judiciary, impartiality , competence of judges, expectation of the public administration of social courts. in order to come across major problems that exist in social courts in relation with appointment of judges I interviewed social court judges in different qebeles of Addiss Ababa. Since I only accessed one brief article written by ato Gediwon Wolde yohannes titled “social courts and their problems”(an Amharic article) this chapter will provide additional information for those who want to undertake further research and to understand what is going on in social courts that typically relates with judges.

For the purpose of convenience I classified the problems in to independence of the judiciary,impartiality,efficiency and ethics.

3.1. Independence of the judiciary

Under the federal democratic republic of Ethiopian constitution of 1993, the judiciary is one of the three most important organs of state .among different judicial bodies the Qebele social courts are one that are established by proclamation 361/2003. In order to achieve democratic governance under the rule of law and constitutionalism, it is important to have a judiciary that is ethical, independent and impartial. Without an

independent and impartial judiciary, democracy is at risk and the human rights of the individual risk the danger of being encroached by an unchecked executive or legislative power. The Limassol Conclusions²⁷ (2002) have stated as follows:

an independent and competent judiciary, which is impartial, efficient and reliable, is of paramount importance. This requires objective criteria for the selection and removal of judges, adequate remuneration, security of tenure and independence from the executive and legislative branches of government.

However, judicial independence does not imply a lack of accountability. Judges should act properly in accordance with their office and should be subject to the ordinary criminal laws of the land. There should be procedures to discipline or dismiss them if they act improperly or otherwise fail in the performance of their duties to society. These procedures should be transparent and administered by institutions which are themselves independent and impartial...

What does “Judicial independence” mean?

In his Address²⁸ delivered on the 13th October 2006, Justice A Gubbay (former Chief Justice of Zimbabwe) relied on the dictionary definition in the Shorter Oxford English Dictionary which postulates-

²⁷ Adopted by the Commonwealth Heads of the Judiciary Colloquium on Combating Corruption within the Judiciary - **Cyprus**, 25-27 June 2002.

²⁸ “Independence, Ethics and Accountability of the Judiciary and the Supporting role expected of the Legal profession” - A public lecture by the former Chief Justice of Zimbabwe Justice Gubbay at the Lesotho Sun Hotel, Maseru, Lesotho.

“Not subject to the control of any personfree to act as one pleases, autonomous ...not influence or affected by others”

Much ink has flowed over the topic or notion of **“judicial independence”** resulting in much controversy and pontification by jurists, politicians and other philosophers. It is a notion much cherished by the judiciary but one often viewed with mistrust and suspicion by the executive rulers and parliamentarians who tend to label it as **“unruliness”** or **“absence of accountability”** on the part of the judiciary. It is the definition of its nature or scope that attracts skepticism or outright rejection in some countries where the executive and legislative arms of state seek to exert control and influence over the judiciary²⁹. A judiciary which is subservient to the executive or legislative arms of government, it is argued, cannot be seen to be independent or impartial especially in cases where the government departments appear as parties litigating before the courts of law.

Judicial independence - classically defined - should not mean that the judiciary should not be **“an unruly horse”** nor does it involve any irrational anti-governmental attitude or stereotype or syndrome. It Only means, as the FDRE Constitution clearly dictates under Section 118 (2) and (3), that-

“(2) The courts shall, in the performance of their functions under this Constitution or any other law, be independent and free from interference and subject only to this Constitution and any other law.

²⁹ In South Africa today there is a hot debate “brouhaha” prevailing over the scope of judicial independence with the executive seeking to control and discipline the judiciary and the judiciary asserting their independence - See Sunday Times of the 17th April 2005; Johnny de Lange **“Judicial Transformation”** - Businessday, May 11, 2005 .

(3) The Government shall accord such assistance as the courts may require to enable them to protect their independence, dignity and effectiveness, subject to this Constitution and any other law."

There must, of course, always exist meaningful and genuine communication or interaction between the judiciary and other arms of government because it cannot be disputed that the vital resources which the judiciary requires for use in the performance of its functions are appropriated and allocated by the Executive and Legislature.

Judicial independence is assured through the following processes-

- (a) Transparent and meritocratic appointment procedures;*
- (b) Absence of undue interferences or influences;*
- (c) Security of tenure;*
- (d) Good ethical culture.*

Judicial independence is however not an absolute concept or an unlimited one. It exists under the Constitution and is constrained by law and certain procedures and above all by judicial ethics. It excludes personal and selfish ends. It must be balanced with responsible conduct, integrity, competence and diligence.

In my view, today judicial independence also encompasses “*judicial accountability*” - not to the Executive or the Legislature - but to the Constitution, to the law of the land and to the general community. Judicial independence is often looked upon with suspicion, if not scorn by some people who question the very concept of independence of the judiciary and label it as being absurd in a unitary state apparatus. Legislative and indeed executive supremacy (based on popular majority) nevertheless still lingers on even in a constitutional democracy. What is important is not the supremacy of any institution by respect by each of

the organ / institution for the function and role played by each in the constitutional set up. Judiciary is not supreme, the Constitution is.

Judicial independence must possess the following qualities-

- (a) Individual independence³⁰.
- (b) Institutional independence.³¹

By *individual independence*:- is meant that each individual judicial officer must be independent in his decision-making, that is, he is not to be coerced or unduly influenced by his colleagues or anyone else. Opinion seeking is however not excluded. Each judge must consciously assume full personal responsibility and accountability for all his actions, conduct and decisions.

***Institutional independence*:-** is descriptive of the judiciary as an institution created by the Constitution; and that the judiciary should enjoy independence and be free from undue interference or coercion from whatever quarter. This in turn guarantees a fair hearing, rule of law and good governance.

A dynamic and vibrant judiciary can exist as an independent institution only if it possesses a strong body of judicial ethics and rules to ensure proper standards of performance, integrity, independence impartiality, competence and diligence. The Executive has a duty under the constitution to ensure that the judiciary is afforded adequate resources/to enable it to discharge its functions efficiently and to guarantee its dignity and independence Basic ethical attributes under the Constitution.

³⁰ See The Law Society of Lesotho vs The Prime Minister - 1985-1990 LLR 500 - a case involving an executive appointment of civil servant prosecutor as an acting judge. (S.N.Peete)

³¹ In Van Rooyen & Others vs The State 2002 (5) SA 246 the Constitutional Court of South Africa held that the constitutional protection of the core values of judicial independence and impartiality is not to be taken as a virtuous end in itself but as inherent in an accused's right to a fair trial under the Constitution. "One of the main goals of institutional judicial independence and impartiality is to safeguard such rights."

No matter how the above facts about independence of the judiciary there are certain problems in social courts as to independence of the judiciary. Ato Gediwon address that some courts are not independent. He pin points w/t Merone Behailu is dismissed from her office in 1997 because she decided against the qebele administration of nefas silk lafto kifleketemma Qebele 10/11 in litigation on unlawful measure taken against Ato Bahru Zemen this typically illustrates individual independence is in tact.³²

Ato Tewodros Ashagre also shares this idea he ironically speaks that since the promulgation of proclamation 12/2003 that establishes social courts of Addis Ababa the courts are not perfectly independent, the appointment was conducted up on the recommendation of the qebele chief executive since then no appointment is made till now. When social courts are organized the chief executives recommend those individuals who are members of the EPRDF political party. For instance the previous presiding judge of kolfe keranyo Qebele 06 and the current presiding judge of Qebele 04 are members of the ruling party. There are also others who are politicians take judgeship in social courts ,he concluded.³³

I observe that much has to be done in connection with institutional independence. even if proclamation 31/ 2007 of the Addis Ababa city government promised to establish judicial council nothing is made till now and social court judges kneel down under the qebeles standing committees to get necessary inputs for the functioning of their day to day activities. By the mere fact that there is no judicial council that can recommend judges to be appointed by the Qebele council the chief

³² Gediwon woldeyohannes ,social courts and their problems,1997E .C pp.7

³³ interview with Ato Tewodros Ashagre yeka kifle ketema kebele 01/02 previous presiding judge ,may 23,2008

executive of the Qeble is empowered to recommended judges to be appointed this ultimately has a negative impact on the institutional independence the social courts.

3.2. Judicial ethics

One of the requirements provided under proclamation 12/2003 and proclamation 31/2007 of the Addis Ababa city government is ethical requirements. Judges are required to be ethical. Before I discuss about this problem it is better to say some thing about judicial ethics.

“Ethics” is generally defined as-

“...moral principles that govern or influence conduct ... it is a branch of knowledge concerned with morality and rectitude...”³⁴

Hence “*Judicial Ethics*” may be defined as those principles and rules of conduct which set standards of behavior and which must be adhered to by members of the judiciary in the discharge of their functions and in their private and official dealings with other institutions and persons. Ethics lie between and connect the judge as a human being and his *persona as* dispenser of justice.

As an honorable profession, the judiciary - like other professions e.g. medicine - needs a code of ethics for the maintenance and upholding of proper standards of conduct in the delivery of justice These ethical are meant to uphold the sacred standards of *independence, impartiality, integrity, competence* and *diligence*; they are intended to found and attract respect, trust and public confidence. These ethical principles to

³⁴ The Concise Oxford English Dictionary

which all judicial officers are to aspire, are designed to constitute a barometer or *litmus* upon which judicial action, performance or conduct may be tested. These principles must be processed by the judiciary itself for its own good, and should not therefore be seen to emanate from the Executive or the Legislature. They must be published in order that they enjoy public knowledge and acclamation.

However the practice in social courts is far from this. Even though both proclamations require the judge should be commendable about his character (ethics) by the residents of the qebele, there is no any means to do so.

Ato Negusse Yohannes the presiding judge in qebele 01/05 of Kolfe Keranyo sub-city has fear as to this. He strongly argues that certain ethical standards have to be established by the judicial council to abide judges in social courts. He says how the judicial council evaluates the ethical background of the judge in the absence of judicial conduct for social court judges. An amusing provision provided under proclamation 31/2007 is article 23(4).this provision allows the judicial council to decide on disciplinary issues of judges.but how and depending on what rules.?

So that the judicial council must be established and empower to issue judicial conduct that abide judges in social courts.³⁵

3.3. Impartiality

When taking his or her judicial oath, a judicial officer solemnly undertakes to perform judicial duties *“impartially without fear, favor, bias or prejudice. ”*

³⁵ interview with Ato negusse yohannes presiding judge in Qebele01/05 of kolfe keranyo subcity may 21,2008

Impartiality is a fundamental qualification of a judge and a core attribute of the judiciary; indeed impartiality and independence - though distinct concepts - are closely related, if not complementary. Without impartiality, arbitrariness, bias and prejudice set in and fairness is violated. Without impartiality judicial independence is meaningless.

Judicial officers must therefore always consciously refrain from doing or saying things that tend to minimize their *impartiality*³⁶. It is in the sometimes acrimonious arena of party politics in Lesotho where the impartiality of the judiciary may be endangered or impugned. An objective judgment in a political trial may be labeled by some as being politically biased. It is wisdom therefore to refrain from any active political affiliation or fraternization in order to avoid any possible political influence. In taking up a judicial appointment a judicial officer necessarily foregoes some ordinary human rights such as that of expression of political views and association. Public confidence will flourish where the courts are independent, impartial and efficient. Impartiality can be tarnished where a judicial officer openly demonstrates bias and prejudice in whatever form in certain cases. One can say the following about impartiality-

“Impartiality is not bias-driven or ill-driven but is justice-driven. It may smack of unfairness or bias to the loser or the convicted - but it will always pass the test of reason and righteousness. To a politician who has not won a case impartiality can be labelled partisan.”³⁶

³⁶ Partisan political activity or out of court statements, though well intended, concerning issues of public controversy by a judge may sometimes undermine and tarnish his impartiality; such utterances attract criticism and sometimes vitriolic rebuttal all injurious to the general perceptions of impartiality and independence of the judiciary.

Impartiality involves analytical application of the law to the facts and a clinical application of judicial discretion and unemotional assessment of evidence. It sidelines fear and favour, it shuns bias and prejudice. For cogent reasons, it may even favour recusal where there is a reasonable apprehension that impartiality will suffer doubt e.g. when conflict of a personal interest overlaps judicial duty.

Impartiality begs or bends for no reward and does not hobnob for any grace, favour or acknowledgement. It is selfless and unselfish, it is not idiosyncratic or self righteous. It is not vindictive or malicious. Impartiality is a behavioral virtue or attribute that must be cultivated and nurtured..

Impartiality should not apply to one case but to all cases - criminal and civil, to all persons alike and not to only one or a few; at all times and not perchance; everywhere and not somewhere; to small and to big and complex cases; to the weak and poor as well as to the rich and the powerful; to the male and female alike.

It is not high handed but even handed; it is not harsh but just. ”

As to this problem w/o Misrak Habte propose that since in the lower structure of the government interference is highly prevalent the judges in social courts may be agitated to be members of the EPRDF. She points that judges other than presiding judges in Kolfe are members of the ruling party and they take side where the

Qebele is defendant. This is also problem in Gulele Kifleketema and Yeka Kifleketema social courts.³⁷

3.4. Competence and Diligence (industriousness)

In order to discharge his judicial functions, the judicial officer must be *competent* and *diligent*. Judicial council³⁸ usually appoints persons whom they deem competent and diligent to perform judicial functions. “*Competence*” implies having the necessary ability and knowledge to do something efficiently; “*diligence*” means “*careful and persistent work. ...*” “*careful and conscientious in one’s work or duties.*”

In the judicial world, competence and diligence describe an ability to carry out judicial duties with professional skill, care and attention as well as with reasonable promptness. Laziness, lateness, discourtesy, inefficiency, shabbiness, procrastination are all an anathema to be avoided.

Performance of judicial duties necessarily involves some measure of personal sacrifice e.g. long hours of research - often late into the night or during weekends. Proper case management is the modern pass-word today and with internet facilities judicial performance is capable of being greatly sharpened and enhanced. In the today’s world, judges have to research into the new developments of the law - polishing their competence and diligence thereby.

Training for judges is forever necessary especially in the new legal approaches fields human of rights, and in other philosophies and sciences. Judgment writing and trial management skills are forever

³⁷ interview with w/omisrak Habte presiding judge of Qebele15/16of kolfe keranyo kifle ketemma may 26,2008

³⁸ Constitution of Leshto, Sections 120 (2), 124 (2), 132 and 133.

being improved for the better. Judges are forever students of law, as the late Justice O.D. Schreiner J.A.³⁹ once stated, and the judge must learn more about the multifaceted aspects of the law. As judge, one does not choose or select his own cases - cases are allocated to him. Some cases are simple, some ordinary, and some complex. A judge needs to diligently grope around to find his way and indeed learning in the process. Complex company or insolvency law matters, intricate commercial or corruption or political cases may come up. A judge must be competent and able to identify the legal issues involved and to assess and master the facts before going into court. No case is ever too difficult or too simple if the judicial officer diligently exerts himself. Sufficient research, of course, depends upon the availability of material recourses e.g. law reports and text- books, and support staff (e.g. judges' clerks).

Under the proclamation, appointment of judges is based upon their qualification as lawyers. This founds their competence as judicial officers. Since there is no formal training for judges, a judicial officer must therefore diligently develop and master his own positive work-ethic. Diligence is a virtue that should be determined by him or her alone. Results of diligence are efficient case and time management, punctuality, timeous delivery of well reasoned (researched) judgments. The art of judgment writing is not dogmatic but an individual or personal trait to be cultivated by the individual judicial officer⁴⁰. A judgment must possess the following qualities - clarity, precision, and relevance, analytical treatment of fact and evidence, and decision.

³⁹ The legendary **Justice O.D. Schreiner** was once president of the Lesotho Court of Appeal in the late 1970's.

⁴⁰ A judgment may be given *ex tempore* or be reserved but must never be over due.

The competence requirement is the back bone of courts. Judges has to be competent in order to render justice which can water the individuals thirsty of justice. Incompetent judges are violators of human rights and democratic rights.⁴¹

The establishing proclamation of social courts stipulates that social courts must render decisions with in short period up on the receiving of statement of claim and statement of defense, nevertheless there are cases which takes two years in social courts due to lack of competence. The lack of competence in social courts is also reflected in their judgements. most⁴² of the judgments in social courts are poor in citation of relevant provisions and some times there is no citation even.

I also come across plenty of cases decided with out hearing of witnesses, laconic judgments and judgments that lack precision.

⁴¹ Gediwon woldeyohannes ,social courts and their and problems,1997E.C pp.11

⁴²ibid

CONCLUSION AND RECOMMENDATION

CONCLUSION

Despite the fact that their social and legal importance social courts remain with many problems as discussed above. The failure to implement the governing proclamation aggravates the problems to go as usual.

The problems have direct impact on the day to day functioning of social court judges and hinder the rendering of justice as far as the purposes of social courts. Even though the above discussed proclamation sets the minimum qualifications that social court judges has to met the practice testify the opposite.

Independence of the judges is also in tact and courts are in problem to render judgments in relation with the qebele administration, particularly. Diligence and competence are also another practical problems associated with the appointment of social court judges.

The writer wants to appreciate some social court judges for their courage to the improvement of the status of social courts in the city.

RECOMMENDATIONS

As to the findings of the research I can recommend the following:

- o The judicial council must be established in order to appoint social court judges according to the spirit of the proclamation.
- o Capacity building for judges is must to improve the efficiency of courts.
- o The executive must be aware of the proclamation that prohibits it from interference in social courts.
- o The judges must undertake their duties to serve the community ethically and judicial conduct of the judges has to be issued.
- o It is better to amend the proclamation in order to isolate the executive from the judiciary at qebele level effectively.



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